



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-038, C-570-039]

Certain Amorphous Silica Fabric from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that amorphous silica fabric with 70-90 percent silica content (70-90 percent ASF) from the People's Republic of China (China) is circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain amorphous silica fabric (ASF) from China.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1121.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2017, Commerce published the AD and CVD orders on imports of ASF from China.¹ On August 20, 2021, Auburn Manufacturing, Inc., the petitioner in the AD and CVD investigations, requested that Commerce initiate circumvention inquiries with regard to 70-90 percent ASF that is exported to the United States from China.² In its allegation, Auburn

¹ See *Certain Amorphous Silica Fabric from the People's Republic of China: Antidumping Duty Order*, 82 FR 14314 (March 17, 2017); and *Certain Amorphous Silica Fabric from the People's Republic of China: Countervailing Duty Order*, 82 FR 14316 (March 17, 2017) (collectively, *Orders*).

² See Petitioner's Letter, "Certain Amorphous Silica Fabric from the People's Republic of China: Request for Anti-Circumvention Inquiry," dated August 20, 2021 (Petitioner's Request).

Manufacturing, Inc. (the petitioner) alleged that 70-90 percent ASF constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*, pursuant to section 781(c) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(i). In addition, the petitioner alleged that 70-90 percent ASF is later-developed merchandise and should be included within the scope of the *Orders*, pursuant to section 781(d) of the Act and 19 CFR 351.225(j). The petitioner requested that Commerce conduct these circumvention inquiries on an order-wide basis.³

On November 24, 2021, Commerce published in the *Federal Register* the notice of initiation of these circumvention inquiries.⁴ In that notice, Commerce initiated the circumvention inquiries on the basis of the minor alterations allegation, pursuant to section 781(c) of the Act and 19 CFR 351.225(i).⁵ However, Commerce declined to initiate the circumvention inquiries on the basis of the later-developed merchandise allegation, pursuant to section 781(d) of the Act and 19 CFR 351.225(j).⁶ Commerce initiated the inquiries on a country-wide basis.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁷ A list of topics included in the Preliminary Decision Memorandum is included in the appendix to this notice.

³ *Id.* at 2.

⁴ See *Certain Amorphous Silica Fabric Between 70 and 90 Percent Silica, from the People's Republic of China: Initiation of Circumvention Inquiry of Antidumping and Countervailing Duty Orders—70–90 Percent Amorphous Silica Fabric*, 86 FR 67022 (November 24, 2021) (*Initiation Notice*), and accompanying Initiation Decision Memorandum. Although Commerce recently published revisions to its circumvention regulations, under 19 CFR 351.226, the new circumvention regulations apply to circumvention inquiries for which a circumvention request is filed on or after November 4, 2021. See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (“{a}mendments to § 351.226 . . . apply to circumvention inquiries for which a circumvention request is filed . . . on or after November 4, 2021”). Because Auburn Manufacturing, Inc. (the petitioner) filed its request on August 20, 2021, before the effective date of the new regulations, these circumvention inquiries are being conducted according to the circumvention regulations, 19 CFR 351.226, in effect prior to November 4, 2021. *Id.*

⁵ *Initiation Notice*, 86 FR at 67023.

⁶ *Id.*

⁷ See Memorandum, “Certain Amorphous Silica Fabric from the People’s Republic of China: Preliminary Affirmative Determination of Circumvention for 70-90 Percent Amorphous Silica Fabric,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the *Orders*

The product subject to the *Orders* is amorphous silica fabric with a minimum silica content of 90 percent by weight, from China. For a complete description of the scope of the *Orders*, see the Preliminary Decision Memorandum.

Merchandise Subject to the Scope and Anti-Circumvention Inquiries

This circumvention inquiry covers amorphous silica fabric with silica content between 70 and 90 percent produced in China and exported to the United States.

Affirmative Preliminary Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, we preliminarily determine that 70-90 percent ASF produced in China and exported to the United States is circumventing the *Orders*. We make this determination on a country-wide basis. As a result, we preliminarily determine that it is appropriate to include this merchandise within the *Orders* and to instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of 70 and 90 percent ASF produced in China and exported to the United States, and to require cash deposits of estimated antidumping and countervailing duties.

Methodology

Commerce made these preliminary affirmative determinations of circumvention in accordance with section 781(c) of the Act and 19 CFR 351.225(i). We relied on facts available, under section 776(a) of the Act, and drew adverse inferences in selecting from among the facts available, under section 776(b) of the Act. We identified potential producers and/or exporters of

70-90 percent ASF produced in China and exported to the United States based on information submitted by the petitioner,⁸ and by reviewing CBP entry data.⁹ We issued questionnaires requesting the quantity and value (Q&V) of production and exports of 70-90 percent ASF produced in China and exported to the United States and related information, from the top 10 producers (by export quantity) represented in these CBP data.¹⁰ None of the 10 companies to which we issued Q&V questionnaires responded in full. Seven companies received the Q&V questionnaire and did not provide a response.¹¹ One company, New Fire Co., Ltd. (New Fire), provided a partial response, but failed to provide a full response or seek a further extension, by the relevant deadline.¹² For two companies, the Q&V questionnaires remains “in-transit.”¹³

Therefore, we preliminarily find that the seven companies and New Fire, the companies that received the Q&V Questionnaires, but which did not respond to our requests for information in full, failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Thus, we further find that they failed to cooperate to the best of their abilities, by not providing the relevant information or seeking an extension prior to the relevant deadline, and we have relied on an adverse inference when selecting from among the facts otherwise available on the record for certain aspects of this preliminary determination, pursuant to sections 776(a) and (b) of the Act. As adverse facts available, we preliminarily determine the eight companies that produce 70-90 percent ASF in China and exported to the United States are circumventing the *Orders*. We further note that the petitioner (the only party to provide information in these inquiries) has

⁸ See Petitioner’s Request at 10-11.

⁹ See Memorandum, “Certain Amorphous Silica Fabric from the People’s Republic of China: Release of U.S. Customs and Border Protection Data,” dated February 24, 2022.

¹⁰ See Commerce’s Letter, “Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Amorphous Silica Fabric from the People’s Republic of China: Quantity and Value Questionnaire,” dated March 17, 2022; see also Memorandum, “Certain Amorphous Silica Fabric from the People’s Republic of China: Q&V Questionnaire Respondents and Tracking of Delivery,” dated concurrently with this preliminary determination (Q&V Respondents and Delivery Tracking Memorandum).

¹¹ See Q&V Respondents and Delivery Tracking Memorandum; see also Preliminary Decision Memorandum.

¹² See New Fire’s Letter, “Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Amorphous Silica Fabric from the People’s Republic of China: Submission of Quantity and Value Response,” dated May 25, 2022; see also Preliminary Decision Memorandum.

¹³ See Q&V Respondents and Delivery Tracking Memorandum at Attachment III.

provided evidence consistent with this finding. Specifically, the petitioner provided evidence that 70-90 percent ASF are “articles altered in form or appearance in minor respects,” within the meaning of 19 CFR 351.225(i) and section 781(c) of the Act, and that 70-90 percent ASF produced in China and exported to the United States is circumventing the *Orders*.¹⁴ Finally, because none of the companies that were mailed a Q&V questionnaire fully responded, Commerce is making this circumvention determination on a country-wide basis.

Suspension of Liquidation

As stated above, Commerce is making preliminary determinations of circumvention of the *Orders* on ASF from China for 70-90 percent ASF produced in China and exported to the United States. Further, we are making this preliminary determination on a country-wide basis. In accordance with 19 CFR 351.225(l)(2), Commerce intends to instruct CBP to suspend liquidation and to require a cash deposit of estimated antidumping and countervailing duties on unliquidated entries of 70-90 percent ASF produced in China that are entered, or withdrawn from warehouse, for consumption on or after November 24, 2021, the date of publication of initiation of the circumvention inquiries in the *Federal Register*.¹⁵ The suspension of liquidation instructions will remain in effect until further notice. Commerce intends to instruct CBP to require AD and CVD cash deposits at the applicable rate for each unliquidated entry of the subject 70-90 percent ASF.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 21 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.¹⁶ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these scope and anti-circumvention inquiries are encouraged to submit with each argument: (1) a statement

¹⁴ See Petitioner’s Request; *see also* Preliminary Decision Memorandum.

¹⁵ See *Initiation Notice*.

¹⁶ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

Consistent with section 781(e) of the Act, Commerce has notified the U.S. International Trade Commission (ITC) of this preliminary determination to include the merchandise subject to these circumvention inquiries within the *Orders*. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

Final Determinations

According to section 781(f) of the Act, Commerce shall, to the maximum extent practicable, make its anti-circumvention determination within 300 days from the date of the initiation of the inquiry.¹⁸ Due to the complicated nature of these anti-circumvention inquiries,

¹⁷ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁸ See also 19 CFR 351.225(f)(iii)(5) (explaining that Commerce will issue a final anticircumvention ruling "normally within 300 days from the date of the initiation of the ... inquiry").

we are hereby extending the deadline for the final determinations of these anti-circumvention inquiries by 73 days. Therefore, Commerce intends to issue the final determinations of these anti-circumvention inquiries to December 2, 2022.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(c) of the Act and 19 CFR 351.225(i).

Dated: August 26, 2022.

Lisa W. Wang,

Assistant Secretary

for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiries
- V. Statutory and Regulatory Framework
- VI. Use of Facts Available and Adverse Inferences
- VII. Circumvention Determinations
- VIII. Country-Wide Determination
- IX. Recommendation

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